

CITY OF HORSESHOE BAY

ORDINANCE NO. ORD 07-12-11D

**SERVICE AND ASSESSMENT PLAN FOR SKYWATER OVER HORSESHOE BAY
PUBLIC IMPROVEMENT DISTRICT NO. 1**

AN ORDINANCE APPROVING A SERVICE AND ASSESSMENT PLAN FOR SKYWATER OVER HORSESHOE BAY PUBLIC IMPROVEMENT DISTRICT NO. 1 (THE "DISTRICT"); APPROVING ASSESSMENT ROLLS; LEVYING IMPROVEMENT ASSESSMENTS ON CERTAIN PROPERTY IN THE DISTRICT; FIXING CHARGES AND LIENS AGAINST THE PROPERTY IN THE DISTRICT AND AGAINST THE OWNERS THEREOF; PROVIDING FOR THE COLLECTION OF THE ASSESSMENT; PROVIDING FOR AN EFFECTIVE DATE; ENACTING OTHER PROVISIONS RELATING THERETO; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW

WHEREAS, a petition was submitted to the governing body of the City of Horseshoe Bay, Texas (the "City"), pursuant to the Public Improvement District Assessment Act, Chapter 372, Texas Local Government Code, as amended (the "Act"), requesting the creation of a public improvement district to be known as Skywater over Horseshoe Bay Public Improvement District No. 1 (the "District");

WHEREAS, the petition contained the signature of an owner of property representing more than fifty percent (50%) of the appraised value of taxable real property liable for assessment within the District, as determined by the current tax roll of the Llano County Appraisal District and the Burnet County Appraisal District, and the signature of a property owner who owns taxable real property that constitutes more than fifty percent (50%) of the area of all taxable real property that is liable for assessment within the District;

WHEREAS, the governing body of the City conducted a public hearing on the advisability of creating the District on January 23, 2007, after giving notice of the hearing in accordance with the requirements of the Act; and afforded additional opportunities for public comment and discussion on March 12, 2007 and March 20, 2007 and the owner of 100% of the taxable real property liable for assessment within the District acknowledged receipt of notice of the hearing;

WHEREAS, on March 20, 2007, the governing body of the City passed and approved Resolution No. RES 07-03-20A making certain findings in connection with the District, relating to the advisability of improvements, the nature of the improvements, the estimated cost of the improvements, the boundaries of the District, the method of assessment and the apportionment of costs, authorizing the creation of the District, and making and directing the publication of notice of the authorization and creation of the District;

WHEREAS, notice of the authorization of the District was published in a newspaper of general circulation within the City, on March 28, 2007, as required by the Act;

WHEREAS, by Resolution No. **RES 07-03-20B** dated March 20, 2007, the governing body of the City approved and adopted a Preliminary Service and Assessment Plan and the proposed Assessment Roll, directed that the proposed Assessment Roll be filed with the Secretary of the governing body of the City for public inspection as required by the Act, directed that a public hearing be held after annexation of the Property was complete at which time the governing body of the City would consider approving the Preliminary Service and Assessment Plan and the proposed Assessment Roll of the District, respectively, and the levy of assessments payable at the times and at the rates and in the amounts proposed in the Preliminary Service and Assessment Plan against each parcel of property in the District as set forth in the proposed Assessment Roll, and directed the Secretary of the governing body of the City to give notice of the public hearing in the manner required by the Act;

WHEREAS, the governing body of the City conducted such public hearing at 3:00 p.m. on November 13, 2007, at which all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or contest the Preliminary Service and Assessment Plan, the proposed Assessment Roll, and each proposed assessment, and offer testimony pertinent to any issue presented on the amount of the assessments, the purpose of the assessments, the special benefit of the assessments, and the penalties and interest on delinquent assessments and the annual installments thereof;

WHEREAS, certain persons appeared in support of the Preliminary Service and Assessment Plan and the levy of assessments as proposed in the Assessment Roll;

WHEREAS, the governing body of the City finds and determines that the Preliminary Service and Assessment Plan should be approved and the assessments which should be levied are substantially as provided in the proposed Assessment Roll;

WHEREAS, the governing body of the City further finds that there were no written objections or evidence submitted to the Secretary of the governing body of the City in opposition to the Preliminary Service and Assessment Plan, the proposed Assessment Roll, and the levy of assessments, but there was material submitted in support thereof;

WHEREAS, the governing body of the City closed the hearing, and considered all evidence presented at the hearing, both written and documentary, and all written comments and statements filed with the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HORSESHOE BAY, TEXAS:

I. FINDINGS

That the recitals and findings in the preamble of this Ordinance are hereby found and determined to be true and correct and incorporated into the body of this Ordinance as if copied in their entirety.

II. ASSESSMENT PLAN

The City Council finds that the Preliminary Service and Assessment Plan, in the form attached hereto as Exhibit A is hereby approved as the Service and Assessment Plan for the District.

III. ASSESSMENT ROLL

The City Council finds that the proposed Assessment Roll included in Schedule I to the Service and Assessment Plan is hereby approved as the Assessment Roll of the District provided however that the Assessment Roll shall be continually updated in accordance with Section 4(d) hereof after each sale of a lot within the District.

IV. LEVY OF ASSESSMENT FOR IMPROVEMENT COSTS

(a) There is hereby levied by the City in Annual Installments (as hereinafter defined), as special assessments, maximum assessments of Twenty Million Seven Hundred Fifty Thousand Dollars (\$20,750,000.00) on all of the assessable property within the District to pay the Improvement Costs as set forth in the Service and Assessment Plan (the "Improvement Assessments") over a period of fifteen (15) years.

(b) The Owner will subdivide the Property into lots within the District in accordance with the platting requirements of City ordinances, as may be amended by the PD Ordinance (as defined in the Development Agreement). At completion of subdivision of the Property, Phase 1 of the Project will be comprised of approximately 200 lots. Phase 2 of the Project will be comprised of approximately 400 lots. Phase 3 of the Project will be comprised of approximately 600 lots.

(c) Each lot in any R-1 Estate, R-1 Hangar, R-1 Villa, and C-2 Commercial land classification shown on the approved plats for each phase of the Project shall be subject to an Improvement Assessment of Two Thousand Dollars (\$2,000.00) per year at such time as described in Section 4(d) hereof. Each Dwelling Unit (as defined in the Zoning Ordinance) in R-2 Villa and R-4 Multifamily shall be subject to the Improvement Assessment of Two Thousand Dollars (\$2,000.00) per year. Any lot in the A-1 Recreation land classification shall not be subject to an assessment of Two Thousand Dollars (\$2,000.00) per year. The Improvement Assessments may be paid immediately or in periodic annual installments over a period of fifteen (15) years (each an "Annual Installment"). The first Annual Installment will be levied as of January 1, 2008 and the final Annual Installment will be levied as of January 1, 2022. Each Annual Installment shall be delinquent if not paid on or prior to January 31 of the year following the preceding tax year.

(d) For each lot within the District, Improvement Assessments shall only be levied at the time of sale by the Owner of such lot within the District. The initial assessment for any such lot shall be levied as of January 1 of the year following the closing of the purchase and sale by the

Owner of such lot within the Project and shall be due on January 31 of the year following the preceding tax year.

(e) There is no apportionment of the Improvement Costs between the City and the area within the District.

(f) Even if the Improvement Assessments do not aggregate Twenty Million Seven Hundred Fifty Thousand Dollars (\$20,750,000.00), the Improvement Assessments will not be levied after January 1, 2022 and will not exceed Two Thousand Dollars (\$2,000.00) per lot per year unless the Improvement Assessments are otherwise permitted to be supplemented or reassessed pursuant to the Act.

(g) The Improvement Assessments may be paid immediately or in periodic annual installments over a period of fifteen (15) years (each an "Annual Installment"). The first Annual Installment will be levied as of January 1, 2008 and the final Annual Installment will be levied as of January 1, 2022. Each Annual Installment shall be delinquent if not paid on or prior to January 31 of the year following the preceding tax year.

(h) If the Improvement Assessment is not paid immediately upon purchase of a lot, each Annual Installment, shall be due on January 31 of each year following the year of the initial assessment with each subsequent Annual Installment being due on January 31 of each year thereafter until all obligations for the Improvement Costs are paid in full or the District is dissolved. The authority to collect the Improvement Assessments within the District shall expire on May 31, 2023 and the City shall require the District to dissolve by May 31, 2023 or earlier if the Improvement Costs have been reimbursed in full.

(i) As the Improvement Assessments are levied by the City and collected by the Llano County Tax Assessor-Collector or Burnet County Tax Assessor-Collector as appropriate and such Improvement Assessments are delivered to the City, the City shall require that such Improvement Assessments be irrevocably placed into an interest bearing segregated bank account with a financial institution selected in accordance with applicable state statutes as required. The Improvement Assessments shall be held in trust and shall not be withdrawn except upon written authorization and certification from the City that such funds are necessary (i) to reimburse the Owner for its Authorized Owner Expenditures (as defined in the Development Agreement dated as of March 20, 2007) for Public Improvement or (ii) to pay Administrative Costs of the District as set forth in the Service and Assessment Plan.

(j) The City shall make aggregate disbursements solely to pay for Public Improvement and Administrative Costs up to Twenty Million Seven Hundred Fifty Dollars (\$20,750,000.00). Reimbursements to the Owner for Authorized Owner Expenditures shall be made by the City on March 1 and August 1 of each year beginning March 1, 2009. All such disbursements of Improvement Assessments shall be made to the Owner. No reimbursements shall be made unless the Owner has submitted its request for reimbursement to the City ten (10) days prior to such date.

V. PREPAYMENT OF ASSESSMENTS FOR EACH YEAR

Pursuant to the provisions of Section 372.018(b) of the Act, the Improvement Assessment on any parcel may be paid in whole at any time by paying the unpaid amount of the Improvement Assessment plus the interest accrued or penalties that have been imposed prior to the date of payment of the Improvement Assessment.

VI. INTEREST AND PENALTIES ON DELINQUENT ASSESSMENTS AND ANNUAL INSTALLMENTS

Pursuant to Section 372.018(b), a delinquent Annual Installment shall incur interest, penalties and attorney's fees in the same manner as delinquent ad valorem taxes in the amounts as described herein:

<u>Month</u>	<u>Interest</u>	<u>Penalty</u>	<u>Total</u>
February	1%	6%	7%
March	2	7	9
April	3	8	11
May	4	9	13
June	5	10	15
July	6	27 ¹	33 ²

¹Includes an additional 15% penalty to defray attorneys' fees

²Interest continues to accrue after July 1 at a rate of increase of 1% per month until paid.

VII. NO DISCOUNTS OR SPLIT PAYMENTS

There shall be no split payment of an Annual Installment or discount for the early payment of an Annual Installment.

VIII. LIEN FOR COLLECTION OF ASSESSMENTS

The Improvement Assessments and each Annual Installment, together with interest, penalties, and expense of collection and reasonable attorneys fees, as permitted by the Act, shall be a first and prior lien against the property assessed, superior to all other liens and claims, except liens or claims for state, county, school district, municipal or other ad valorem taxes, and shall be a personal liability of and charge against the owner of the property regardless of whether the owners are named. The lien for the Improvement Assessments, each Annual Installment and penalties and interest thereon is effective from the date of the Ordinance Levying the Assessments until the Improvement Assessments are fully paid and shall be enforced by the City. in the manner provided by Vernon's Texas Tax Code for collecting ad valorem taxes on real property; provided, however, nothing in this Agreement shall require the City to foreclose the lien on any property subject to the Improvement Assessments. This Ordinance shall be recorded in the Official Public Records of Llano County, Texas and Burnet County, Texas in accordance with Texas Property Code §51.008, as amended.

IX. APPLICABILITY OF TAX CODE

To the extent not inconsistent with this Ordinance, and not inconsistent with the Act or the other laws governing public improvement districts, the provisions of the Texas Tax Code relating to the imposition and collection of ad valorem taxes by the City shall be applicable to the imposition and collection of the Improvement Assessments by the City.

X. FORECLOSURE OF LIEN AND ACCELERATION OF ANNUAL INSTALLMENTS

Any sale of property for nonpayment of the Improvement Assessments or an Annual Installment shall be subject to the lien established for the remaining unpaid Annual Installments against such property and such property may again be sold at a judicial foreclosure sale if the purchaser thereof fails to make timely payment of the nondelinquent Improvement Assessments or Annual Installments against such property as they become due and payable pursuant to the terms of the Ordinance Levying the Assessments.

Notwithstanding the foregoing, if a property owner fails to pay an Annual Installment when due, either as to principal or interest, the City shall have the right to accelerate the maturity of the remaining Annual Installments against such property and declare the entire unpaid balance of the Improvement Assessment against such property due and payable; provided that the City (i) shall give written notice of the delinquency and of its intent to accelerate the maturity of the remaining unpaid balance of the Improvement Assessment, and (ii) no sooner than 15 days thereafter, shall give written notice of acceleration, stating the date on which the total remaining unpaid balance of the Improvement Assessment, as so accelerated, shall be due, which date shall be no earlier than the date of such notice of acceleration. All such notices shall be mailed to the owner of the real property against which the delinquent Improvement Assessment was levied, as determined from the most recent property tax rolls of the Llano County Tax Assessor-Collector or Burnet Central Appraisal District, and any notice so mailed to the address shown on such tax rolls shall be deemed effective, regardless of whether such notice is actually received by the property owner. Although not required to do so, upon nonpayment of such accelerated unpaid balance of the Improvement Assessment, the City shall have the right to foreclose for such entire unpaid balance of the Improvement Assessment.

XI. ASSESSMENTS DUE ON SALE

Upon the sale of any lot or parcel within the District, the unpaid balance of the Improvement Assessment attributable to such lot or parcel shall be immediately due and payable, together with any unpaid penalties and interest then due for delinquent Improvement Assessments or Annual Installments.

XII. SUPPLEMENTAL ASSESSMENTS

Pursuant to Section 372.019 of the Act, the City Council may make supplemental Improvement Assessments to correct omissions or mistakes in the assessments relating to the total cost of the Public Improvements.

XIII. REASSESSMENTS

Pursuant to Section 372.020 of the Act, the City Council may make a reassessment of the parcel of land if (1) a court of competent jurisdiction sets aside the Improvement Assessment against the lot; (2) the City determines the original Improvement Assessment was excessive; or (3) on the written advice of counsel, the City determines that the original Improvement Assessment was invalid.

XIV. SEVERABILITY

If any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Ordinance or the application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the governing body of the City in adopting this Ordinance that no portion hereof, or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness, or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

XV. EFFECTIVE DATE AND TERMINATION OF THE SERVICE AND ASSESSMENT PLAN

The Service and Assessment Plan shall take effect on the effective date of this Ordinance and shall continue for a period of fifteen (15) years from January 31, 2008 regardless of whether the Improvement Costs of Twenty Million Seven Hundred Fifty Thousand Dollars (\$20,750,000.00) have been fully reimbursed; provided, however, the Service and Assessment Plan shall extend beyond such fifteen-year period for any such reasonable period to collect any delinquent Improvement Assessments.

XVI. OPEN MEETING

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Ordinance was adopted was posted and that such meeting was open to the public as required by law during all times during which this Ordinance and the subject matter hereof were discussed, considered, and formally acted upon, all as required by the Texas Open Meetings Act, chapter 551, Texas Government Code, as amended and the Act.

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APPROVED and ADOPTED by a vote of the City Council of the City of Horseshoe Bay, Texas on this 11th day of December, 2007.

CITY OF HORSESHOE BAY, TEXAS

/S/

Robert W. Lambert, Mayor

ATTEST:

/S/

Toni Vanderburg, City Secretary

EXHIBIT “A”

SERVICE AND ASSESSMENT PLAN

SCHEDULE I

ASSESSMENT ROLL